

MICHIGAN CONSUMER PROTECTION ACT (MCPA)

~ QUICK FACTS ~

- Nearly **three-fourths of the 13,122 complaints** received by the Attorney General in 2008 were **not covered** by the MCPA as a result of the Smith v Globe Michigan Supreme Court decision in 1999.
- Several types of businesses are exempt under the Michigan Consumer Protection Act. They include: insurance companies, banks, savings banks, credit unions and public utilities. House Bill 4915 does not change these exemptions.
- All 49 other states have effective consumer protection laws. However, since the MCPA was decimated by the Smith v Globe ruling in 1999, it has not served to create jobs or attract new businesses to Michigan.
- The law was designed to protect consumers and honest businesses from "unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce." However, as a result of the Smith v Globe ruling in 1999, the National Consumer Law Center calls Michigan's statute "...worse than worthless..."
- The MCPA law passed in 1977 with strong bipartisan support and support from the business community and consumer groups.
- The MCPA gave strong enforcement powers to prosecutors and the Attorney General.
 - **Prior to Smith v Globe in 1999, if an enforcement agency believed a licensed business had violated the act or was about to, it could:**
 - Request a court order to stop the business from using the questionable practice. The business had 10 days to comply before court action.
 - Request the court to require the business to appear before the enforcement agency for questioning or review of records.
 - Accept assurance of discontinuance (business does not admit guilt, agrees to stop questionable practice).
 - File a class-action lawsuit on behalf of consumers.
 - Negotiate a settlement.
 - **Penalties for violation:**
 - Continued and deliberate violation of prohibited practice: business may be fined up to \$25,000.
 - Person who violates a court order on purpose may be fined up to \$5,000.
 - Civil penalty for a person who ignores or avoids a subpoena or who hides important information is up to \$5,000.

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The following are examples of the differences between the Michigan Consumer Protection Act when originally written and as it was changed by the Supreme Court decision in 1999.

BEFORE

(when passed in 1977)

- Protected consumers from businesses that deceive their customers. Dishonest businesses faced having to reimburse or pay damages to the cheated customer or pay \$250, whichever was greater, plus reasonable attorney's fees. Prosecutors and the Attorney General had greater enforcement powers to stop and punish wide spread and ongoing scams. The act was designed to protect consumers and **honest** businesses. Specific unfair and unconscionable acts not allowed in business dealings were listed and violations could be easily prosecuted.
- Consumers were able to require honest and fair dealing under the Act from **all** licensed and unlicensed businesses.
- A Michigan used car dealer who sold a "certified pre-owned" car that had been damaged in the floods after Hurricane Katrina, for example, without telling the buyer about its history would be in violation of the Act.
- A seller of goods that sold U.S. flags in packaging indicating that they were made in the United States knowing they were made in China would be in violation of the Act.
- A business that deliberately tries to undermine its competition by circulating a letter falsely stating its competitor has gone out of business would be in violation of the Act. (See attached)

AFTER

(Smith v Globe 1999)

- Consumers no longer are protected from unfair practices by licensed businesses. All businesses licensed by the state are exempt from the law, including home sales, car sales, car repair, plumbers, home improvement contracts, lending companies and numerous others. The National Consumer Law Center calls Michigan's statute "...worse than worthless."
- Consumers are **only** able to enforce the Act against **unlicensed** businesses. Consumers are at the mercy of dishonest businesses that engage in unscrupulous practices because as long as the business has a license there is no longer any threat that the consumer could punish it for cheating.
- A consumer who buys a "certified pre-owned" car from a Michigan licensed used car dealer **cannot** sue under the Act, even if the dealer knew that the car was a Katrina flood car.
- A consumer who buys a product believing the packaging or the salesperson with regard to the product's origins, ingredients, what it can be used for or even how many of the item are in the box has no recourse against a licensed business when these facts turn out to be untrue. This is the case even when a customer gets the item home and discovers it comes from a different country, contains peanuts or is Cubic Zirconium, not a diamond ring.
- A business that discovers that its competitor is circulating a letter stating that the business is going under and people should start using the competitor's services now has no other recourse than to attempt to correct the damage by spending money to send out its own letter. (See attached)

A-1 Mechanical

OF MI. LLC
HEATING • AIR CONDITIONING • FIREPLACES

Dear Valued A-1 Mechanical Customer:

It has come to our attention that one of our competitors is sending misleading information to our customers. Some of this information is creating the impression that we are no longer in business or doing business under a different name. We would like to assure you, that we have been doing business in the Lansing Area for **25 years** and will continue to do so. We have always done business under the **A-1 Mechanical** name and do not intend to change it. We are still a Carrier Dealer and in fact are the largest Carrier Dealer in the Lansing area.

We would also like to take this opportunity to remind everyone that the "Cool Cash" promotion is coming to an end June 30. There are rebates of up to \$1200 on select equipment. There is no better time to upgrade your old in-efficient equipment than now. Call today for your free in home estimate (517) 322-2300.

Thank you for your time,

A-1 Mechanical

P.S. Thank you for voting us The Community News "Best of the Best" 5 years in a row

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